

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 289 OF 2011

1. Sunita Gorakh Savale	)	
Age: 43 years, Occ: Household,	)	
2. Pradeep Gorakh Savale,	)	
Age: 23 years, Occ: Education	)	
3. Pritam Gorakh Savale,	)	
Age: 22 years, Occ: Education,	)	
All r/o. Savale Galli, Barshi,	)	
District Solapur.	)....Appellants	
	(Orig. Applicants/Claimants)	

Versus

1. Mahtabsingh Ganpatsingh,	)	
Age: Adult, Occ: Business,	)	
R/o. 30E, Saket Nagar, Indore	)	
District Indore,	)	
Madhya Pradesh – 452001	)	
2. Pravin Gorakh Savale,	)	
Age: 25 years, Occ: Education,	)	
R/o. Savale Galli, Barshi,	)	
District Solapur.	)	
3. National Insurance Co. Ltd.,	)	
(Notice be served on Branch Manager	)	
Solapur Divisional Office), Datta	)	
Chowk, Shubrai Towers, Solapur.	)...Respondents	
	(Resp. Nos. 1 & 3/ Orig.	
	Resp. Nos. 1 & 2,	
	Resp. No.2 / Orig.	

Applicant No.2)

Mr. Rajeshekhar S. Alange, Advocate for the Appellant.
Mr. Rahul Mehta i/b KMC Legal Venture, Advocate for the
Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. This appeal is preferred by the Appellants/Claimants against the dismissal of the claim petition.
2. It is contention of the learned counsel for the Appellants/Claimants that deceased died in the accident, due to dash given by the offending Metador but, this fact is not considered by the Tribunal and on relying on statement given by the witness before the police, the Tribunal has dismissed the claim petition, which is erroneous. Learned counsel further submitted that deceased was retired from the Army service and was working as a security guard and would get Rs.1800/- per month. He was working as tailor with Gourav Ladies and Gents Tailor situated at Sawale Chawl, Barshi and he was getting Rs.100/- to Rs.130/- per day from tailoring work.

Thus, he was getting Rs.5,000/- per month. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.3/Insurance Company that deceased was riding the motorcycle in high speed and in rash and negligent manner. While overtaking the Metador, he dashed the Metador and died. The statement of pillion rider was recorded by the police. In the said statement the pillion rider has stated that accident caused due to negligence of the deceased. On that basis, the Tribunal has dismissed the claim petition, which is proper. Learned counsel further submitted that the Tribunal has considered all the aspects while dismissing the claim petition. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short the “the Tribunal”).

5. It is claimant’s case that on 15th February, 2007 at about 3:15 p.m. deceased was proceeding from Solapur to Barshi on motorcycle bearing registration No. MH-13-AA-5405 along with his friend. They were going on the left side of the road, when they reached near the spot of accident, one Metador bearing registration

No. MH-09-KB-5607 came from the opposite direction, driven at a high speed in rash and negligent manner. There was heavy vehicle ahead of the motorcycle of the deceased. The deceased tried to overtake the said vehicle, he applied brakes. When he found that he could not overtake that vehicle in the process of applying brakes and bringing his vehicle behind that heavy vehicle, the front portion of the Metador i.e. the driver side came across the middle line of the tar road and there was crash/dash between the Metador and motorcycle of deceased. Due to dash, deceased fell down on the road and he sustained grievous injuries and died while undertaking treatment. The offence was registered against the deceased.

6. To prove the negligence of Metador driver, the claimants have examined PW-6 Santosh Karad, who was pillion rider on the motorcycle of deceased, at Exhibit – 58. He has stated that deceased Gorakh was riding the motorcycle and he was pillion rider. The offending Metador was coming from opposite direction, the deceased tried to overtake the truck, ahead of their motorcycle and in that process he was driving the same in excessive speed. The Metador driver gave dash to the motorcycle and motorcycle was dragged to the other side of the road. He further stated that, the accident occurred

due to negligence of the Metador driver. In cross-examination, he denied that deceased was driving the motorcycle in fast speed, due to negligence of the deceased the accident occurred. He further admitted that, he did not lodged report to the police. Though, his statement was not recorded as per his say, he admits that, the statement recorded by the police are not true and correct and not as per his say.

7. While dealing with the issue of negligence, the Tribunal has observed the statement of PW-6 Santosh, recorded by the police after the accident and in that statement, he has stated that he had advised deceased Gorakh to drive cautiously and slowly but he went on driving at fast speed, he tried to overtake the truck ahead of their motorcycle but, he could not control the motorcycle and dashed the Metador, which was coming from the opposite side. He has stated to the police that accident occurred due to negligence of the deceased Gorakh. I am unable to understand, the observations of the Tribunal as a pillion rider who is eye witness of the incident has stated that accident occurred due to negligence of the driver of Metador and it has come on record that the said Metador came on other side of the divider line of the road and gave dash to the motorcycle of the

deceased. The spot panchanama at Exhibit-33 supports the evidence of PW-6 pillion rider. Moreover, to prove the negligence of deceased, driver of the Metador did not enter into witness box. Though, the PW-6 has stated that before the police about the negligence of the deceased but in cross-examination he has denied the suggestion that his statement was recorded by the police as per his say. Investigation Officer is not examined by the insurance company to prove the statement of PW-6. The evidence given by the witness before the Tribunal has to be considered over the statement given to the police. The Hon'ble Apex Court in the case of *National Insurance Company Limited vs. Chamundeshwari & Ors. 2022 (1) Bombay C.R. 102* has held that the evidence which is recorded before the Tribunal had to be given weightage over the contents of the First Information Report. In the present case, the pillion rider who is eye witness to the incident has stated before the Tribunal that accident occurred due to negligence of the driver of Metador. Though, deceased was trying to overtake the vehicle, it does not mean that he was sole responsible for the accident. The Metador was coming from opposite direction. It was possible for the Metador driver to avoid the dash. The PW-6 has stated that the Metador driver had come on the other side of divider

line of the road and gave dash to the motorcycle of deceased. Considering evidence on record, I am considering 70% negligence of driver of Metador and 30% negligence of the deceased.

8. To prove the income of deceased, the claimants have examined claimant No.1 Sunita Savale, wife of deceased, she has stated that deceased was working as security guard in Punmiya Dal Mills and he was getting Rs.1800 per month as salary and he was doing tailoring work and he was getting Rs.3,000/- per month from it. He was earning total Rs.5,000/- per month. In support of evidence of PW-1, the claimants have examined PW-2 Arun Sawale at Exhibit 42, he has stated that he run tailoring shop naming Gourav Ladies and Gents Tailor, he has registered his business with Barshi Municipal Council under the Shop Act and licence is at Exhibit-43. He further stated that deceased Gorakh used to work with him prior to his death for the two years and he used to pay him Rs.3,000/- per month as a salary. Nothing elicited in his cross-examination, he admitted that deceased was his distant relative and he has not maintained record of payment given to the deceased. The Claimants examined PW-3 Dr. Mahesh Naikode at Exhibit-48. He has stated that after the accident, deceased had sustained injuries and he was admitted in his hospital

and the family of deceased paid total bills of Rs.9,000/- after giving charity of Rs.1800/-. The claimants examined PW-5 Suresh Surwase at Exhibit-55, he has stated that he runs a Private firm under the name and style as United Security Services situated at Solapur and he provides Security Services. The deceased was security guard from December, 2005 at Jawahar Dal Mill Barshi and his salary was Rs.1800/- per month. He had to work for 8 hours for a day. The salary register is at Exhibit-56. Nothing elicited in his cross-examination to disbelieve his evidence.

9. From the evidence of these witnesses it appears that deceased was working as security guard as well as he was doing tailoring work and he was earning around Rs.5000/- per month. Considering evidence on record, I am considering notional income of deceased at Rs.4,000/- per month. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, the claimants are entitled for 25% future prospects, as deceased was 50 years old. As per view of Hon'ble Apex court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimants are entitled at Rs.48,000/- for consortium amount and Rs.18,000/- for funeral

expenses and Rs.18,000/- for loss of estate.

10. Considering the above calculations, the claimants are entitled for following compensation.

Monthly Income	Rs.4,000/-
Annual Income	Rs.48,000/-
Add: 25% future prospects	Rs.12000/-
Total income	Rs.60,000/-
Multiplier X 13	Rs.7,80,000/-
Less 1/4th amount deductions personal expenses	Rs.1,95,000/-
Less 30% contributory negligence	Rs.1,75,500/-
Total	Rs.4,09,500/-
Medical Expenses	Rs.14,159/-
Consortium Rs.48,000/- X 4 (Claimants.)	Rs.1,92,000/-
Funeral Expense	Rs.18,000/-
Loss of estate	Rs.18,000/-
Total compensation	Rs.6,51,659/-

11. In view of above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for compensation of Rs.6,51,659/-- @ 7.5 % interest per annum from the date of filing claim petition, till realisation of the amount. Out of this amount Rs.2,28,000/- is consortium amount, the claimants are entitled @ 7.5%

interest on this amount from 1st November, 2017 till
realisation of the amount.

- iii. The respondent/insurance company shall deposit the
enhanced amount along with accrued interest thereon,
within six weeks after receipt of the order.
- iv. The claimants are permitted to withdraw deposited
amount along with accrued interest thereon.

12. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)